



#3137

Practitioner's Docking No.

BROOKSTONE 00.04

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: SCHWARTZ et al.

Application No.: 09 / 801,353 Group No.: 3737

Filed: March 7, 2001 Examiner:

For: Massaging Bed Rest With Light

AUG 24 2001

RECEIVED

Assistant Commissioner for Patents  
Washington, D.C. 20231

PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT  
(37 C.F.R. § 1.102 and M.P.E.P. § 708.02)

NOTE: See M.P.E.P. § 708.02, 7th ed.

Applicant hereby petitions to make this application special because of actual infringement.

1. Accompanying material

Accompanying this petition is:

- (a) a Statement of Facts in Support of Petition to Make Special Because of Actual Infringement;

and

- (b) a Statement by Attorney in Support of Petition to Make Special Because of Actual Infringement

2. Fee (37 C.F.R. § 1.17(i)-\$130.00)

- ☐ Attached is a ☐ check ☐ money order in the amount of \$ \_\_\_\_\_
- ☒ Authorization is hereby made to charge the amount of \$XXXXXXXXXXXX any additional fees required to Deposit Account No. 08-1391
- ☒ to Credit card as shown on the attached credit card information authorization form PTO-2038.

WARNING: Credit card information should not be included on this form as it may become public.

- ☐ Charge any additional fees required by this paper or credit any overpayment in the manner authorized above.

A duplicate of this paper is attached.

  
SIGNATURE OF PRACTITIONER

Reg. No.: 24,315

Tel. No.: ( 520 ) 882-7623

Customer No.:

Norman P. Soloway  
(type or print name of practitioner)  
Hayes, Soloway, Hennessey, Grossman & Hage  
130 W. Cushing Street  
P.O. Address  
Tucson, AZ 85701

Practitioner's Docket No. BROOKSTONE 00.04**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re application of: SCHWARTZ et al  
 Application No.: 09 / 801,353 Group No.:  
 Filed: March 7, 2001 Examiner:  
 For: MASSAGING BED REST WITH LIGHT

Assistant Commissioner for Patents  
 Washington, D.C. 20231

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 TECHNOLOGY CENTER R3700

**STATEMENT IN SUPPORT OF PETITION TO MAKE SPECIAL  
 BECAUSE OF ACTUAL INFRINGEMENT (M.P.E.P. § 708.02)**

NOTE: "Subject to a requirement for a further showing as maybe necessitated by the facts of a particular case, an application may be made special because of actual infringement (but not for prospective infringement) upon payment of the fee under 37 CFR 1.17(i) and the filing of a petition accompanied by a statement by the applicant, assignee, or an attorney/agent registered to practice before the PTO alleging: (A) That there is an infringing device or product actually on the market or method in use; (B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art. Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record. Models or specimens of the infringing product or that of the application should not be submitted unless requested." M.P.E.P. § 708.02, 7th ed.

I, Norman P. Soloway  
 Name 175 Canal Street, Manchester, NH 03101  
 P.O. Address  
24, 315  
 Reg. No.  
(603) 668-1400  
 Tel. No.  
 am the ☐ applicant, ☐ assignee, ☒ practitioner in this case and make the following statements:  
 1. I have made a rigid comparison of the alleged infringing  
☒ device  
☐ product  
☐ method  
 referred to in my accompanying statement of even date  
 with the claims of this application.

(add any pertinent comments that may apply)

2. That, in my opinion, claims 1,2,4,5,7,10,11,12, on file in this application  
are unquestionably infringed. 14,15,16,25,27,28,30,

31,32,34,36,37,45,46 and 47

(add any pertinent comments that may apply)

(check all applicable items below)

3. I

- ☐ have made a search of  
☒ have caused to be made a search of  
☐ have a good knowledge of

the pertinent prior art. All such material art is provided to the Examiner as

- ☐ having been filed  
☐ being supplemented  
☒ being filed herewith

in a respective Information Disclosure Statement.

NOTE: Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record. M.P.E.P. § 708.02, 7th ed.

4. That I believe all the claims in this application

- ☒ as on file and  
☒ as on file resulting from the attached amendment

are allowable.

Date: 8-16-01

  
Signature NORMAN P. SOLOWAY

Reg. No. (if applicable): 24,315

(Statement by Practitioner in Support of Petition to Make Special Because of Actual Infringement  
(M.P.E.P. § 708.02) [9-13]—page 2 of 2)

Practitioner's Docket No. BROOKSTONE 00.04**PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: SCHWARTZ et al  
Application No.: 09 /801,353 Group No.:  
Filed: March 7, 2001 Examiner:  
For: MASSAGING BED REST WITH LIGHT

Assistant Commissioner for Patents  
Washington, D.C. 20231

**STATEMENT OF FACTS IN SUPPORT OF PETITION TO MAKE SPECIAL  
BECAUSE OF ACTUAL INFRINGEMENT (M.P.E.P. § 708.02)**

NOTE: Prospective infringement is not a ground for making special. M.P.E.P. § 708.02, 7th ed.

I,

Name of person making statement Norman P. SolowayAddress 175 Canal Street, Manchester, NH 03101

- ☐ am the inventor;  
☒ have the following interest or relationship to the above identified invention  
Attorney for Assignee.

and I hereby state the following:

NOTE: Models or specimens of the infringing product or that of the application should not be submitted unless requested. M.P.E.P. § 708.02, 7th ed.

1. There is an actual infringement of this invention.

(state facts about the infringing device or product actually on the market or  
method in use)

See attached Statement of Facts, and Exhibits thereto.

2. The

- ☒ device  
☐ product  
☐ method

that I allege infringes this invention was first discovered to exist on January-April, 2001

  
Signature NORMAN P. SOLOWAY

(Statement of Facts in Support of Petition to Make Special Because of Actual Infringement  
(M.P.E.P. § 708.02) [9-12]—page 2 of 2)